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No. 82-1595

In the Supreme Court of the United States

OCTOBER TERM, 1982

FRANCES PECORA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a single interstate telephone call that furthered petitioner's bribery scheme was sufficient to establish federal jurisdiction under the wire fraud statute (18 U.S.C. 1343) and the Travel Act (18 U.S.C. 1952).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A19) is reported at 693 F.2d 421.

JURISDICTION

The judgment of the court of appeals was entered on December 1, 1982. A petition for rehearing was denied on January 21, 1983 (Pet. App. B1-B3). The petition for a writ of certiorari was filed on March 19, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Louisiana, petitioner was convicted of devising a scheme to defraud the citizens of a Louisiana parish of the faithful services of their sheriff and district attorney, in violation of 18 U.S.C. 1343 (the wire

fraud statute); using an interstate facility to carry on bribery, in violation of 18 U.S.C. 1952 (the Travel Act); and conspiracy, in violation of 18 U.S.C. 371. She was sentenced to concurrent two-year terms of imprisonment for both the conspiracy and the wire fraud counts. On the Travel Act count, sentence was suspended and petitioner was placed on three years' probation and fined $10,000.[1]

1. The evidence at trial showed as follows. On October 13, 1980, following a state-federal investigation, Nofio Pecoraro, petitioner's son, and six other persons were arrested on state charges of possession of marijuana with intent to distribute (Pet. App. A4; Tr. 234).[2] Pecoraro was incarcerated at the sheriff's office in Tangipahoa Parish, Louisiana, under the supervision of Sheriff James Edward Layrisson (Pet. App. A4).

On October 28, 1980, co-defendant Jimmie Burrescia visited Sheriff Layrisson ostensibly to discuss fund raising for a local tax referendum, but during the conversation Burrescia discussed Pecoraro's arrest. The next day petitioner gave Burrescia $10,000 in cash in order to obtain favorable treatment for her son from the local officials (Tr. 924-932). Thereafter, Burrescia returned to the sheriff's office and indicated to the sheriff that he had $9,000 in cash for the sheriff and the district attorney of Tangipahoa Parish (Tr. 240). The sheriff then excused himself for a while,

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[1]Petitioner's co-defendants, Nofio Pecoraro (her son) and Jimmy Burrescia, were also convicted of conspiracy, wire fraud, and illegal use of an interstate facility. Pecoraro's convictions were affirmed by the court of appeals. Burrescia did not appeal his convictions.

[2]Pecoraro was subsequently convicted of possession of marijuana with intent to distribute and conspiracy to do the same, in violation of 21 U.S.C. 841(a)(1) and 846. The convictions were affirmed by the court of appeals. 697 F.2d 1091 (1983).

telling Burrescia he had to see to other business. While he was away from the office, the sheriff put on a body transmitter in order to record Burrescia's bribe offer (Tr. 239-242).

Burrescia told the sheriff and the district attorney that the money was being offered so that Pecoraro would avoid being prosecuted for a felony. Burrescia also told the sheriff that there was more to come from the other defendants in the narcotics case if they too could receive similar, favorable treatment (Tr. 244-246). After Burrescia left the sheriff's office, it was decided not to arrest him at that time but instead to determine the source of his money (Tr. 247-248).

On November 6, in a recorded meeting with the sheriff, the district attorney and Burrescia (Tr. 257, 260-319), petitioner specified precisely what she wanted in exchange for the bribe. Subsequently, Burrescia and the sheriff attempted to work out the details of the bribe.

On November 17, Sheriff Layrisson told Burrescia that he wanted to speak to petitioner, and Burrescia told him that petitioner also wanted to have a conversation (Tr. 335-337, 342-343). Later that day, Burrescia telephoned the sheriff and handed the phone to Pecoraro (Tr. 370-371). After a brief discussion of matters pertaining to the bribe, the sheriff asked Pecoraro to have petitioner telephone him (Tr. 380-382).

The next day petitioner telephoned the sheriff at his office (Tr. 384-385). She explained that she was in Georgia (Tr. 387). Petitioner and the sheriff then discussed their displeasure with Burrescia (Tr. 388-396). Petitioner was especially irritated about Burrescia's having arranged to have her son speak directly to the sheriff (Tr. 389-392). Petitioner and the sheriff agreed to meet after petitioner returned to Louisiana (Tr. 392-396). Following several more meetings, petitioner personally gave the sheriff and the district attorney an additional $52,020 (Tr. 559-561, 571-572).

2. Petitioner filed a motion in the district court to dismiss the indictment against her on the ground that there was no basis for federal jurisdiction (Pet. App. A2). The court deferred consideration of the issue until after trial, and then, based on the phone call from Georgia to Louisiana, it rejected petitioner's claim in its decision denying her motion for acquittal (*id.* at A3).

The court of appeals affirmed (Pet. App. A1-A19). Relying primarily upon the plain language of both the wire fraud statute and Travel Act, the court held that petitioner's phone call to Sheriff Layrisson, which set up an additional meeting to discuss further a bribe, was sufficient to permit the exercise of federal jurisdiction (Pet. App. A7-A12).[3] The court also rejected the claim that the call was the result of a government effort to manufacture federal jurisdiction (Pet. App. A10-A11, A17).

Judge Brown dissented only with respect to the wire fraud conviction (Pet. App. A17-A19). He would have vacated that conviction on the ground that the one call, although it furthered the bribery scheme, was fortuitous and thus merely incidental to petitioner's scheme.

ARGUMENT

Petitioner argues (Pet. 8-12) that the nature of her offenses were local and thus she should have been prosecuted by state, not federal, authorities. She asserts that a local bribery scheme should not be converted into federal offenses "merely because the perpetrator * * * happened to go out of state to visit a sick friend and returned a call to [a party to the scheme]" (Pet. 12), and she invites the Court to "tighten up the requirements of federal criminal jurisdiction" by disallowing this prosecution.

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[3]Appendix A to the petition omits two paragraphs of the court of appeals' opinion (Pet. App. A9). These paragraphs are reprinted in 693 F.2d at 424.

Petitioner has filed her petition with the wrong branch of government; it is for Congress, not the Court, to modify the Travel Act and wire fraud statute. As drafted, they clearly extend to petitioner's conduct. Under the Travel Act, "[t]here is no requirement that the use of interstate facilities be essential to the scheme; it is enough that * * * the use of interstate facilities makes easier or facilitates the unlawful activity." *United States* v. *Perrin*, 580 F.2d 730, 736 (5th Cir. 1978), aff'd on other grounds, 444 U.S. 37 (1979). See also *United States* v. *Barbieri*, 614 F.2d 715, 718 (10th Cir. 1980). The conversation between petitioner and the sheriff pertained to nothing but the bribery scheme, focusing mostly on the untrustworthiness of Burrescia. Even Judge Brown, in partial dissent, conceded that "the phone conversation clearly furthered the bribery scheme" (Pet. App. A18).

Similarly, under the wire fraud statute, the use of interstate wires need not actually further the illegal scheme, but need only, in the words of the statute, be "for the purpose of executing such scheme." See *United States* v. *Garner*, 663 F.2d 834, 838 (9th Cir. 1981), cert. denied, 456 U.S. 905 (1982); cf. *United States* v. *Maze*, 414 U.S. 395, 400 (1973) (18 U.S.C. 1341).

Nor is it relevant, as petitioner contends (Pet. 11), that the phone call in question was interstate by virtue of "happenstance," it being mere fortuity that she was in Georgia at the time she was executing her bribery scheme. First, neither the Travel Act nor the wire fraud statute requires that a criminal enterprise be fundamentally interstate in character. Every court of appeals that has considered the issue has held that a single interstate telephone call is jurisdictionally sufficient. *United States* v. *Bagnariol*, 665 F.2d 877, 898-899 (9th Cir. 1981), cert. denied, 456 U.S. 962 (1982); *United States* v. *Perrin*, *supra*, 580 F.2d at 735-736; *United States* v. *Garner*, *supra*, 663 F.2d at 838. Moreover, it was not

really happenstance that interstate facilities were used in this case. It was petitioner's decision to employ the interstate telephone system as a part of her scheme to bribe public officials; she decided not to wait until she returned home before continuing her effort to protect her son.[4] Accordingly, the decision of the court of appeals that this telephone call satisfied the jurisdictional requirement in both the wire fraud statute and the Travel Act was correct and does not warrant review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1983

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[4]This is not a case where the government manufactured federal jurisdiction by inducing petitioner to make an interstate phone call. The district court found (Tr. 895-896) and the court of appeals held unanimously (Pet. App. A10-A11, A17) that "the sheriff requested Burrescia to have [petitioner] call him before the sheriff knew that she was in Georgia" (*id.* at A10).

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